

***IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO***

IN RE:

CARMEN DAVILA RAMOS

DEBTOR(S)

CASE NO.: 21-00363 MCF

CHAPTER 13

ANSWER TO MOTION FOR DISMISSAL

TO THE HONORABLE COURT:

Come(s) debtor(s) represented by the undersigned attorney and most respectfully EXPOSE(S) and PRAY(S):

Creditor Hector Noel Ramos Davila (hereinafter Creditor) filed a Motion to Dismiss alleging

- (1) that the instant case was filed with bad faith.
- (2) debtor's inability to reorganize
- (3) that the property is unnecessary for debtor's financial rehabilitation

Background Proceedings

1. Creditor is a secured creditor in the instant case. Creditor, after acquiring by transfer the loan from BPPR, alleges being owed the amount of \$814,262.24 (see POC 6) secured by the following properties:

"RUSTICA: Plot marked with the number one hundred and forty-nine C (149-C) in the plot plan of the rural community El Negro del Barrio Camino Nuevo of the municipality of Yabucoa, with a shallow space of

six hundred one point fourteen (601.14) square meters, on the edge of the NORTH, with plots one hundred and forty-three (143), one hundred and forty-four (144) and one hundred and forty-nine A (149-A) of the community; by the SOUTH, with plots one hundred and forty-nine (149) and one hundred and fifty (150) and access to community number eleven (11) street; and by the WEST, with plot number one hundred and forty-nine A (149-A) of the community."

"RUSTICA: Plot of land located in the Martín and Camino Nuevo neighborhoods of the municipality of Yabucoa, composed of NINE THOUSAND HUNDRED AND SIXTY AND NINE POINT EIGHT MIL FOUR HUNDRED SESENTA AND ONE (9,169,8461) SQUARE METERS equivalent to TWO POINT THREE THOUSAND THREE HUNDRED AND ONE (23331) CUERDAS. On the edge of the NORTH, with area located for public use of Highway number ninety-nine zero one (9901); by the SOUTH, with the raving, by the EAST, with Highway number ninety-nine zero one (9901); and by the WEST, with area dedicated to the same ninety-nine zero one (9901)."

A Chapter 13 Plan has been filed in the instant case which provides for payment toward creditor Ramos Davila according to a valuation of the properties securing the creditor's interest. The Chapter 13 Plan has been amended to **provide adequate protection payments since the filing of the case in the amount of \$2,500.00**. Such payment can be adjusted upon considering of the value of the collateral securing the claim and with the final allowance of the claim. Creditor at this stage is protected and no cause has been invoked for the dismissal of this case.

2. **Creditor has not shown any for the dismissal of this case beyond the mere existence of a debt that is subject of a valuation The property that serves as collateral for said debt is essential to debtor's reorganization plan and the Plan in the instant case provides for**

payment owed to creditor, within Chapter 13 Bankruptcy Code provisions and for the benefit of other creditors and parties in interest.

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3. “Good faith is an amorphous notion, largely defined by factual inquiry,” and based on the totality of the circumstances. In re Okoreeh-Baah, 836 F.2d 1030 (6th Cir. 1988) Although particular cases are of little precedential value, a broad review should reveal certain patterns and conduct that have in specific cases been characterized as bad faith. These include:
- (1) a perceived improper impact on non-bankruptcy rights;
 - (2) a recent transfer of assets, i.e., the “new debtor syndrome” cases;
 - (3) an inability to reorganize; and
 - (4) unnecessary delay, i.e., serial filings. 3 Collier on Bankruptcy P 362.07 (16th 2020)
4. Being in debt is an integral part of debt reorganization and the existence of debt itself should not be punishable, without cause, by exclusion from reorganization efforts. Debtor has in good faith done the utmost to maintain a functioning business amidst unprecedented, fortuitous occurrences such as a hurricane, an earthquake, and a pandemic. Throughout each course- altering occurrence, Debtor has not shied away from the obligation she has contracted first with Banco Popular, and now with creditor Ramos Davila.

Principles of Good Faith

5. Good faith on a creditor’s behalf is crucial for a reorganization plan that is in the best interest of all parties. In the instant case, Creditor has refused to negotiate any agreement as to the payment of the arrears in the loan. Since the initial contact with the debtor, he has insisted on the debtor’s delivery of the property as the only solution and identified himself with the debtor’s acquaintances and customers as the property’s new owner.
6. As a result of the foregoing debtor respectfully requests this Court to deny creditor request for the dismissal of this case.

WHEREFORE, the denial of the Motion to Dismiss in the case is hereby requested according to the aforementioned.

NOTICE

Within fourteen (14) days after service as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if you were served by mail, any party against whom this paper has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the clerk's office of the United States Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, the paper will be deemed unopposed and may be granted unless: (i) the requested relief is forbidden by law; (ii) the requested relief is against public policy; or (iii) in the opinion of the court, the interest of justice requires otherwise.

I hereby certify that on this same date, I electronically filed the foregoing with the Clerk of the Court using CM/ECF System which will send notification of such filing to the parties registered in the CM/ECF System. All other parties have been notified by the United States Postal mailing service.

RESPECTFULLY SUBMITTED.

In Caguas, Puerto Rico, today August 22, 2021.

/s/ JOSE A. LEÓN LANDRAU, ESQ.

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